



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ANDRIYEVSKA v. UKRAINE

(Application no. 34036/06)

JUDGMENT

STRASBOURG

1 December 2011

FINAL

01/03/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Andriyevska v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Boštjan M. Zupančič,

Mark Villiger,

Ann Power-Forde,

Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 November 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 34036/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms Tamara Mykolayivna Andriyevska (“the applicant”), on 10 August 2006.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev, succeeded by Ms Valeria Lutkovska.

3. The applicant alleged, in particular, that her right of access to a court under Article 6 § 1 of the Convention had been violated.

4. On 10 May 2010 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Pavlograd.

A. Proceedings against Oranta State Insurance Company

6. In June 2003 the applicant instituted proceedings for damages against Oranta State Insurance Company in the Babushkinsky District Court of Dnipropetrovsk (“the Babushkinsky Court”).

7. On 18 April 2005 the court dismissed the claim as unsubstantiated.

8. On 1 September 2005 and 18 May 2006 the judgment was upheld by the Dnipropetrovsk Regional Court of Appeal and the Supreme Court of Ukraine, respectively.

B. Proceedings against the local police department

9. In June 2003 the applicant also instituted proceedings against her former employer, the local police department, seeking recovery of some retirement-related and other payments.

10. On 10 May 2005 the Babushkinsky Court found against her.

11. On 17 November 2005 the Dnipropetrovsk Regional Court of Appeal upheld the judgment. It stated in the operative part that the applicant had the right to challenge the decision before the Higher Administrative Court within one month.

12. The applicant appealed in cassation.

13. On 3 February 2006 the Higher Administrative Court declined jurisdiction to consider her appeal in cassation on the ground that the case was of a “civil” rather than an “administrative” nature and therefore the Supreme Court was the correct court of cassation.

14. The applicant resubmitted her appeal in cassation to the Supreme Court. On 5 June 2006 the latter, referring to Article 210 of the Code of Administrative Justice, declined jurisdiction asserting that, in fact, the Higher Administrative Court was the appropriate forum for the case.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIAL

15. The relevant domestic law and documents of the Council of Europe are quoted in the judgment in *Bulanov and Kupchik v. Ukraine* (nos. 7714/06 and 23654/08, §§ 20-25, 9 December 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE APPLICANT'S RIGHT OF ACCESS TO A COURT

16. The applicant complained that she had been unlawfully denied access to a court of cassation. She relied on Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

17. The Government submitted that the applicant had not exhausted the domestic remedies available to her.

18. While agreeing that both the Higher Administrative Court and the Supreme Court (rulings of 3 February and 5 June 2006 respectively) had declined jurisdiction to consider the applicant's appeal in cassation, the Government considered that the domestic legislation afforded the applicant the possibility to remedy that situation.

19. Namely, they referred to Article 237 of the Code of Administrative Justice (see paragraph 15 above), pursuant to which the applicant could request the Supreme Court to review the aforementioned rulings in the light of the conflicting application of the law as an exceptional circumstance.

20. The applicant disagreed.

21. In its judgment regarding the case of *Bulanov and Kupchik*, the Court already examined and dismissed a similar objection raised by the Government in comparable circumstances (cited above, § 32). Namely, the Court held there that the procedure suggested by the Government concerned an extraordinary review, which was not a remedy within the meaning of Article 35 § 1 of the Convention.

22. The Court finds no reasons to hold otherwise in the present case and dismisses the Government's objection. It further notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

23. The applicant maintained that her right of access to a court had been infringed by the refusal of jurisdiction over her cassation appeal by both the Higher Administrative Court and the Supreme Court.

24. The Government did not submit observations on the merits of this complaint.

25. The Court notes that it already examined a similar complaint in the aforementioned *Bulanov and Kupchik* case and found a violation of Article 6 § 1 of the Convention on account of the lack of the applicants' access to a court of cassation in civil proceedings (§§ 34-40). It does not see any reason to hold otherwise on the merits of the present case.

26. There has therefore been a violation of Article 6 § 1 of the Convention in respect of the applicant's right of access to a court.

II. REMAINDER OF THE APPLICATION

27. The applicant also complained under Article 6 § 1 of the Convention that both sets of proceedings brought by her had lasted an unreasonably long time. She further challenged the outcome of the proceedings against Oranta State Insurance Company and complained that the lower courts had wrongly dismissed her claims in the proceedings against the local police department. The applicant additionally relied on Articles 1 and 13 of the Convention without being any more specific.

28. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

30. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government contested the claim as unsubstantiated and, in any event, exorbitant.

32. Ruling on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

33. The applicant also claimed 1,500 Ukrainian hryvnias (UAH) for legal fees (about EUR 130), UAH 613.17 in respect of postal expenses (about EUR 53), UAH 229.30 for the domestic court fees (about EUR 20), UAH 118.50 for transport expenses (about EUR 10), EUR 50 for translation services, and UAH 41.60 for taping and copying services (about EUR 4).

34. The Government considered that not all the expenses were related to the present application. Furthermore, they noted that the applicant had not provided any documents proving that she had in fact been legally represented. They considered that the applicant had supported her claim for postal expenses related to her correspondence with the Court in the amount of UAH 357.65 (about EUR 30).

35. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 80 covering costs under all heads.

C. Default interest

36. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention of lack of access to court admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:

- (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 80 (eighty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President